

### **REMARKS**

Applicants provisionally elect **with traverse** the invention of Group II, claims 5-8, 35 (in part), 37, and 38-40 (in part), directed to a Form B of rizatriptan benzoate. However, Applicants reserve the right to present non-elected claims 1-4, 9-34, 36, and 41-42 in one or more divisional applications. Furthermore, in the event the Examiner maintains the outstanding restriction between the elected invention of a crystalline polymorph Form B of rizatriptan benzoate and the methods of making (Group IV) and using (Group VI) such a composition, set forth in claims 24-31, 32-34 (in part), and 41-42 (in part) and claims 43-44, respectively, Applicants reserve right the rejoinder in accordance with the provisions of 37 C.F.R. § 1.104. Accordingly, the examination of non-elected method claims 24-34 and 41-44 should be held in abeyance until the indication of an allowable composition claim.

### **CONCLUSION**

The Office Action of November 21, 2008 set a one-month shortened statutory period for response, response falling due December 21, 2008. Further to the petition for one-month extension of time submitted herewith, response is due on or before **January 21, 2009**. Accordingly, Applicants submit that this response is timely and no additional fees, apart from those included herewith, are required. However, in the event that further fees are required to enter the instant response and/or maintain the pendency of this application, the Commissioner is authorized to charge such fees to our Deposit Account No. 50-2101.

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If the Examiner has any questions or concerns regarding this communication, she is invited to contact the undersigned.

Respectfully submitted,

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